REMARKS

Objection to the Claims

The Examiner objects to claims 1 and 7 noting that certain occurrences of "speaker" should be followed by --module--. Applicants have made the amendment suggested by the Examiner. Applicants respectfully submit that the amendment does not narrow the scope of the claim, because one of ordinary skill in the art would appreciate that "speaker" referred to the "speaker module" previously recited in the claim. Applicants request the Examiner to withdraw the objection.

Rejections under 35 U.S.C. § 103(a)

Claims 1-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,887,070 to Iseberg (hereinafter "Iseberg") in view of U.S. Patent No. 2,430,229 to Kelsey (hereinafter "Kelsey").

Claims 6-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,606,621 to Reiter et al. (hereinafter "Reiter") in view of Iseberg and Kelsey.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art cited must teach or suggest all the claim limitations. *See* M.P.E.P. § 2143. Applicants assert that the cited references do not satisfy these criteria.

Applicants have amended claims 1 and 7. The amendments are supported by, inter alia, paragraphs [0137]-[0142] and FIGURES 17-20. No new matter has been entered.

Claims 1 and 7

Claim 1 recites, in part:

> a cushion tip of elastic deformable material, said cushion tip including a tubular body enclosing said speaker module that applies an elastic force to said arcuate raised ridge to prevent removal of said speaker module from said cushion tip, said tubular

body being longer than said speaker module to cause said cushion tip to deflect during navigation through the canal, and wherein a tip portion of said cushion tip possesses sufficient structural rigidity to prevent said speaker module from being pushed through said cushion tip during navigation through the canal, wherein during deflection said tip portion assumes an offset angle relative to said tubular body and said speaker module.

Claim 7 recites, in part:

a cushion tip of elastic deformable material, said cushion tip including a tubular body enclosing said speaker module that applies an elastic force to said arcuate raised ridge to prevent removal of said speaker module from said cushion tip, said tubular body being longer than said speaker module to cause said cushion tip to deflect during navigation through the canal, and wherein a tip portion of said cushion tip possesses sufficient structural rigidity to prevent said speaker module from being pushed through said cushion tip during navigation through the canal, wherein during deflection said tip portion assumes an offset angle relative to said tubular body and said speaker module.

As recited in the claims, there are two modifiers used to describe parts of the cushion tip. First, the cushion tip is "deformable," i.e., it is capable of having its shape altered. Additionally, the cushion tip "deflects." As used in the specification and the claim, deflection is not merely synonymous with deformation. Instead, deflection means that the "tip portion assumes an offset angle relative to said tubular body and said speaker module." Additionally, Applicants note that the cushion tip of claim 1 includes at least two separate structural components, i.e., the "tubular body" and the "tip portion."

Applicants respectfully submit that the tip element of Iseberg does not satisfy the limitations of claims 1 and 7. Iseberg merely discloses an insert earphone device having an "eartip of soft compliant material." *See* col. 3, lines 39-40. The "eartip" of Iserberg consists of "three outwardly projecting flange portions 39, 40, and 41." Col. 3, lines 41-42. The flange portions are of conical form and of progressively increasing diameters. Col. 3, lines 42-43 and FIGURE 2. Applicants note that there is no "tubular body" in the Iseberg eartip. As explicitly described by Iseberg, the flanges are conical. The eartip of Iseberg has an interior tubular void within the conical flanges to receive the speaker module. However, a mere empty region of space within the conical flanges cannot be read upon a "tubular body" structure.

Additionally, the claimed tubular body must be longer than the speaker module to allow the tip portion of the cushion tip to deflect relative to the tubular body and speaker module. There is no teaching or suggestion that the conical flanges of Iseberg could be deflected to assume an offset angle relative to the speaker module of Iseberg. From the FIGURES and description of Iseberg, it can only be assumed that the conical flanges are compressed against the speaker module of Iseberg.

Kelsey discloses a similar tip element consisting of multiple conical elements. *See* FIGURE 1 of Kelsey. Also, as acknowledged by the Examiner, Reiter does not disclose a "cushion tip."

Accordingly, the cited references (either alone or in combination) do not teach or suggest each and every limitation of claims 1 and 7. Claims 1 and 7 are allowable over the cited art. Claims 2-5 and 8-12 respectively depend from base claims 1 and 7 and, hence, inherit all limitations of their base claim. Claims 2-5 and 8-12 are likewise allowable.

Conclusion

In view of the above amendment, Applicants believe the pending application is in condition for allowance. Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 59184/P002CP2/10302842 from which the undersigned is authorized to draw.

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Respectfully submitted,

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